

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

LPAC no. 03/2011

Date of Judgment: 11.02.2015

J&K Bank Limited
v.
Vinay Kumar and others

Coram:

Hon'ble Mr. Justice N. Paul Vasanthakumar, Chief Justice
Hon'ble Mr. Justice Bansi Lal Bhat, Judge

Appearing counsel:

For the Appellant(s)	:	Mr. R. K. Jain, Advocate.
For the Respondent(s)	:	None.

i/	Whether to be reported in Press/Media	:	Yes
ii/	Whether to be reported in Digest/Journal	:	Yes

N. Paul Vasanthakumar, CJ

1. Heard Mr. R. K. Jain, learned counsel appearing for the appellant Bank.

2. This appeal is preferred against the judgment dated 26.4.2005 made in CIA.No.25-A of 2000, whereby the learned single Judge upheld the Judgment and Decree dated 20.5.2000 in C.S.No.39 of 1988 made by the learned District Judge, Kathua.

3. From the pleadings it is seen that one Viney Kumar, by impersonating himself as Vijay Kumar, obtained a loan of Rs.75,000/- from the appellant Jammu & Kashmir Bank Ltd, for the purchase of a Truck, agreeing to repay the loan amount in 42 equal installments with 12.5 % interest till realization of the entire amount. One Dev Raj and Paras Ram stood as

guarantors. The said borrower having failed to repay the loan amount, the amount payable to the bank as on 21.1.1988 was calculated as Rs.1,75,762.91.

4. A Civil suit in File No.39 of 1988 was filed on the file of the District Court, Kathua, for recovery of the said amount against the said Viney Kumar (D1) and the guarantors viz., Dev Raj and Paras Ram (D2 & D3). The first defendant Viney Kumar did not appear and he was set *ex parte*. Defendants 2 and 3 appeared before the Court and contested the suit. According to the defendants 2 and 3, they have not executed any guarantee deed in favour of the bank, and therefore they cannot be held liable to make any payment. The Trial Court framed four issues viz.,

- (i) Whether defendant Viney Kumar has impersonated himself as Vijay Kumar before the Plaintiff Bank and on such false personation, obtained loan of Rs.75,000/- ?
- (ii) Whether the defendant Dev Raj and Paras Ram stood as Guarantors for the payment of loan for and on behalf of Viney Kumar, who too in their knowledge personated himself as Viney Kumar, before the plaintiff bank ?
- (iii) Whether the suit has been filed by a competent person ?
- (iv) Whether the plaintiff is entitled to recover Rs.1,75,792.91 from defendant No.1 as Principal borrower and defendants No.2 and 3 as Guarantors with contractual interest ?

The Trial Court considered the said issues and arrived at a factual finding and dismissed the suit, against which the Bank filed the first appeal before the learned single Judge in CIA.No.25-A of 2000.

5. During the course of the arguments before the learned single Judge, the learned counsel for the Bank did not assail the findings on issue Nos.1 and 2 as the Bank failed to place on record the Guarantee Deed allegedly executed by defendants 2 and 3 acknowledging their liability to repay the loan in case of default by first defendant. In fact, the learned counsel for the appellant conceded the fact that no guarantee deed was available with the bank.

6. Insofar as the other submission that Viney Kumar by impersonating himself as Vijay Kumar had obtained loan of Rs.75,000/- and he executed a promissory note and an irrevocable power of attorney in favour of the Bank, the same were not proved.

7. The learned single Judge also rendered a factual finding that in the Power of Attorney the engine number, chassis number and registration number of the vehicle have been mentioned, which pertains to a second-hand Truck. The loan application said to have been submitted nowhere states that for the purchase of second-hand truck, the loan was availed. If new truck was to be purchased by the borrower, then payment would have been made through payee cheque to the concerned seller. Even if second-hand truck was to be purchased, then also payee cheque would have been made to the Seller. The suit was filed against Viney Kumar, whereas

the documents maintained by the Bank contain the name of Vijay Kumar. The Bank failed to let in any evidence to prove that Viney Kumar impersonated with the name Vijay Kumar. Therefore, the learned single Judge rendered a finding that Viney Kumar cannot be made liable to the loan said to have been obtained by Vijay Kumar.

8. The learned counsel appearing for the appellant further argued that the findings of the learned single Judge that the promissory note was not attested and therefore the same cannot be relied on, is an erroneous finding and the said position may be clarified by this Court, failing which the said finding rendered by the learned single Judge may be treated as a precedent in other cases. Since there is no legal requirement to get the signature found in the promissory note attested, the learned counsel for the appellant is justified in his submission. Hence the findings of the learned single Judge on that aspect alone is set aside.

9. Since factual findings were rendered by the Trial Court as well as by the learned Single Judge, the same cannot be interfered with, unless the said findings are found as perverse. No material is placed by the appellant Bank to upset the factual findings or to treat the said factual findings as perverse.

10. We do not find any reason to interfere with the order of the learned single Judge. Consequently this appeal is dismissed with the above modification. No costs.

(Bansi Lal Bhat)
Judge

(N. Paul Vasanthakumar)
Chief Justice

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